BILAL A. ESSAYLI
United States Attorney
LINDSEY GREER DOTSON
Assistant United States Attorney
Chief, Criminal Division
RAHUL R.A. HARI (Cal. Bar No. 313528)
NEIL P. THAKOR (Cal. Bar No. 308743)
Assistant United States Attorneys
General Crimes Section
1200 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-6159/6595
E-mail: Rahul.Hari@usdoj.gov
Neil.Thakor@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MAKSIM ZAITSEV, Defendant.	No. 2:25-cr-00154-SPG GOVERNMENT'S OPPOSITION TO DEFENDANT'S EX PARTE APPLICATION FOR ORDER OF RELEASE AND/OR DISMISSAL OF THE CASE WITH PREJUDICE; DECLARATION OF BRIAN C. PETERSON Location: Courtroom of the Hon. Sherilyn Peace Garnett

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorneys Rahul Hari and Neil Thakor, hereby files its Opposition to Defendant's Ex Parte Application for Order of Release and/or Dismissal.

//

This Opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: April 11, 2025

Respectfully submitted,

BILAL A. ESSAYLI
United States Attorney

LINDSEY GREER DOTSON
Assistant United States Attorney
Chief, Criminal Division

/s/
RAHUL R.A. HARI
NEIL P. THAKOR
Assistant United States Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Maksim Zaitsev is detained by the United States Immigration and Customs Enforcement ("ICE") in immigration custody pursuant to the express terms of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq.[1] Defendant asks the Court to ignore the INA because the Court previously found that defendant should be released on bond pursuant to the Bail Reform Act, a wholly separate statute, and either order defendant's release from immigration custody or dismiss the indictment.

Defendant's motion fails as a matter of law because, as explained by the Ninth Circuit, "detention of a criminal defendant pending trial pursuant to the Bail Reform Act and detention of a removable alien pursuant to the Immigration and Nationality Act are separate functions that serve separate purposes and are performed by different authorities." United States v. Diaz-Hernandez, 943 F.3d 1196, 1199 (9th Cir. 2019) (cleaned up). Accordingly, although defendant relies on a non-binding district court decision that predates Diaz-Hernandez, "[n]o court of appeals . . . has concluded that pretrial release precludes pre-removal detention." United States v. Soriano Nunez, 928 F.3d 240, 245 (3d Cir. 2019) (collecting cases). This Court should find the same and deny defendant's extraordinary and legally baseless request for immediate release from immigration detention.

[1] Defendant is subject to mandatory detention under 8 U.S.C. § 1225(b) as an "arriving alien," as defined under 8 U.S.C. § 1001.1(q), and discretionary detention under 8 U.S.C. § 1226(a)(1).

Defendant's motion is also factually baseless. The routine inconveniences of scheduling legal visits with defendant (whether in immigration custody or pretrial criminal detention) is insufficient to establish a claim of inadequate access to counsel. See United States v. Lewis, 873 F.2d 1279, 1280 (9th Cir. 1989). More to the point, the DFPD's declaration in support of defendant's motion listed a myriad of ways that the defense can communicate with defendant to prepare for trial in this case, including in-person visits, telephonic calls, and video appointments, but the declaration failed to allege that the defense in fact tried to communicate with defendant using one or more of the many alternative communication methods and was in fact unable to do so. That is because, as explained further below, it is easier to conduct in-person legal visits and schedule calls at Desert View Annex, where defendant is currently detained, than what is alleged by the defense.

The Court should deny the motion in full.

II. STATEMENT OF FACTS

A. Defendant's Immigration History

On or about December 16, 2022, defendant and his wife applied for entry into the United States from Mexico as asylees at the San Ysidro Port of Entry. See Government's Motion in Limine No. 3 at 2-3, Dkt. 38. Defendant and his wife identified themselves as citizens of Russia and presented their Russian passports to immigration authorities. Id. at 3. Defendant did not possess a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid documents allowing him to enter or remain in the United States, thereby making him removable from the United States under the INA. 8 U.S.C.§ 1182(a)(7)(A)(i)(I). Id. Accordingly, defendant was

issued a Form I-862, Notice to Appear and "paroled into the United States pending 240 proceedings." Id. Defendant's notice to appear identifies defendant as "an arriving alien," and states that defendant is "subject to removal from the United States." Id.

On or about February 6, 2025, Supervisory Detention and Deportation Officer Carlos Fuentes, an authorized immigration officer, signed an I-200 administrative arrest warrant for defendant. Id. Mr. Fuentes identified that the probable cause for defendant's arrest was "the pendency of ongoing removal proceedings against the subject." Id.

B. Defendant's Criminal Charge

On February 25, 2025, defendant reported to the Federal Building in downtown Los Angeles for an appointment at the U.S. Citizenship and Immigration Services office. The appointment was a law enforcement ruse to safely arrest defendant in a controlled environment pursuant to the administrative arrest warrant. Defendant was handcuffed and walked away from the private room where he was arrested towards a non-public elevator.

When defendant entered a hallway, defendant began resisting the arresting officers, including kicking off the wall, dropping his body weight to the ground, and turning back towards the lobby. When officers turned defendant forward, including by directing his face forward, defendant bit down on the finger of one of his arresting officers, lacerating flesh and fracturing his arresting officer's finger. Defendant has been charged with a single count of assault on a federal officer resulting in bodily injury in violation of 18 U.S.C. § 111(a)(1), (b).

On February 26, 2025, defendant appeared for an initial appearance on a criminal complaint before the duty magistrate judge and was ordered detained. Minutes of Initial Appearance, Dkt. 4. On March 11, 2025, the magistrate court denied defendant's application for reconsideration of pre-trial detention. Minutes of Detention Hearing, Dkt. 15. On April 2, 2025, this Court heard argument on defendant's application for review and reconsideration of defendant's pre-trial detention and ordered defendant released under the Bail Reform Act. Amended Criminal Minutes, Dkt. 32.

C. Defendant's Detention Under the INA and Attorney Visitation Policy

On April 4, 2025, defendant was taken into custody on his immigration detainer under the INA and transported to Desert View Annex in Adelanto, California, where he is currently detained. Desert View Annex is approximately 85 miles from the Los Angeles office of the Federal Public Defender in San Bernadino County, within the Central District of California.

Criminal defense attorneys are permitted to see their clients at Desert View Annex by appointment or walk-in. See Declaration of Brian Peterson ("Peterson Decl.") at ¶¶ 5-6. Appointments are available seven days a week (weekends and holidays included) and can be made up to one week in advance. Id. at ¶ 4, Ex. 1. Walk-ins are allowed with a valid bar card or a copy or photograph of a bar card. Id. at ¶ 6. Contrary to the defense's claims, in-person attorney visits are not subject to the one-hour time limit. Id. Attorneys can also contact their clients through video appointments. Id. at ¶ 7. Video appointments are subject to the one-hour time limit to give all detainees equal access to virtual appointments with their

attorneys. Id. Paralegals, legal support staff, and translators can accompany attorneys on visits with clients, though they must receive ICE clearance in a process that takes approximately fifteen minutes. Id. at 8.

III. LEGAL STANDARD

A. The Bail Reform Act and the Immigration and Nationality Act

Congress enacted the Bail Reform Act, 18 U.S.C. § 3142, et seq., to "give the courts adequate authority to make release decisions that give appropriate recognition to the danger a person may pose to others if released...." United States v. Salerno, 481 U.S. 739, 741 (1987). After a hearing, if a judicial officer finds that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial." 18 U.S.C. § 3142(e)(1).

A separate statute, the INA, 8 U.S.C. § 1101, et seq., charges the United States Secretary of Homeland Security with the administration and enforcement of the INA and other immigration laws. Under the INA, ICE is authorized to detain, or in some cases required to detain, individuals who are subject to removal. See 8 U.S.C. § 1225(b) (requiring mandatory detention of individuals deemed to be "arriving aliens."); 1226(a)(1) (authorizing discretionary detention pending removal.). Specifically, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), "Mandatory Detention," states that any arriving alien "shall be detained pending a final determination of credible fear of persecution ... until removed."

Section 1226(a) of the INA also provides the Attorney General discretion to arrest and detain an individual "pending a decision on

whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). If the Attorney General grants parole, she may revoke bond or parole "at any time," and may "rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b) (emphasis added). In short, the INA permits immigration authorities to rearrest individuals subject to removal for any reason, at any time, pending a removal decision.

B. Applicable Detention Authority Under the INA

Both 8 U.S.C. §§ 1225(b) and 1226(a)(1) apply here. First, as an alien who presented himself for admission at the border, defendant is classified as an "arriving alien" under 8 U.S.C. § 1001.1(q), that is, "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 U.S.C. § 1226(b) applies to "arriving aliens" like defendant and sets forth procedures for the inspection or detention of aliens who are applicants for admission to the United States. See generally, 8 U.S.C. § 1225. 8 U.S.C. § 1226(b)(1)(B)(IV) requires mandatory detention until removed.[2]

Alternatively, 8 U.S.C. § 1226(a)(1) provides the discretionary authority to detain noncitizens pending removal, "on a warrant issued by the Attorney General." See 8 U.S.C. § 1226(a)(1).

[2] Defendant will be entitled to a Rodriguez bond hearing after he is in ICE custody for six months. See Rodriguez v. Holder, No. CV 07-3239 TJH (RNBx), 2013 WL 5229795 (C.D. Cal. Aug. 6, 2013), aff'd in part, rev'd in part sub nom. Rodriguez v. Robbins, 804 F.3d 1060 (9th Cir. 2015), rev'd sub nom. Jennings v. Rodriguez, 583 U.S. 281 (2018).

IV. ARGUMENT

A. The Immigration and Nationality Act is Independent of the Bail Reform Act

ICE's authority to detain defendant pursuant to the INA is separate and apart from the Court's authority to detain or release defendant under the Bail Reform Act. See Diaz-Hernandez, 943 F.3d at 1199 (9th Cir. 2019). Defendant's argument to the contrary, premised on a district case from Oregon, fails. United States v. Trujillo-Alvarez, 900 F. Supp. 2d 1167 (D. Or. 2012). Trujillo-Alvarez is not binding precedent on this Court, ignores the independent detention authority prescribed by the INA, and was issued before the Ninth Circuit's decision in Diaz-Hernandez.

Consistent with the Ninth Circuit's explanation in Diaz-Hernandez that detention under the Bail Reform Act and detention under the INA are "separate functions that serve separate purposes and are performed by different authorities," six other circuits have rejected defendant's claim that the government cannot pursue a criminal prosecution while an alien is detained by immigration authorities. See Soriano Nunez, 928 F.3d at 245 (3d Cir. 2019) (holding that pre-trial release under the Bail Reform Act does not preclude pre-removal detention under the INA and that "No court of appeals that has examined this assertion has concluded that pretrial release precludes pre-removal detention"); United States v. Lett, 944 F.3d 467, 471 (2d Cir. 2019) ("the Bail Reform Act and the INA authorize the government to pursue both criminal prosecution and removal simultaneously, and there is no conflict between the detention-and-release provisions of the two statutes."); United States v. Baltazar-Sebastian, 990 F.3d 939, 944-45 (5th Cir. 2021)

(same); United States v. Veloz-Alonso, 910 F.3d 266, 270 (6th Cir. 2018) ("ICE may fulfill its statutory duties under the INA to detain an illegal alien pending trial or sentencing regardless of a Bail Reform Act release determination."); United States v. Pacheco-Poo, 952 F.3d 950, 953 (8th Cir. 2020) (same); United States v. Vasquez-Benitez, 919 F.3d 546, 552 (D.C. Cir. 2019) (same).

Taking Lett, for example: the defendant was a citizen of Trinidad and Tobago and was arrested at John F. Kennedy International Airport after CBP found 2.12 kilograms of cocaine in his suitcase. 944 F.3d at 469. "CBP paroled Lett into the United States for criminal prosecution and transferred him to the custody of the Bureau of Prisons ("BOP"), and the government filed a criminal complaint charging Lett with importing cocaine...." Id. Meanwhile, ICE lodged an immigration detainer against him. Id. Ultimately, the district court ordered Lett's release pending his criminal case. Id. Then ICE acted on the lodged detainer and took the defendant into ICE custody following his release from BOP, and initiated removal proceedings. Id. "Lett filed a motion to dismiss the indictment in his criminal case, arguing that his continued detention by ICE violated the Bail Reform Act." Id. The district court dismissed the Indictment holding that the government needed to decide whether to criminally prosecute or remove Lett but could not proceed simultaneously. Id. at 469-470. The Second Circuit vacated this decision finding that the Bail Reform Act and the INA "serve different purposes, govern separate adjudicatory proceedings, and provide independent statutory bases for detention," and therefore "the government's authority to detain an alien pursuant to the INA"

does not disappear merely because he cannot be detained under the Bail Reform Act pending his criminal trial. Id. at 470.

Here, ICE acted on their immigration detainer, which was lodged prior to defendant's grant of bond, and took defendant into ICE custody pursuant to its detention authority under the INA. Contrary to defendant's position, the government is not required to choose what proceedings to pursue and may pursue both removal and criminal proceedings simultaneously as authorized by statute. For this reason, the Court should deny defendant's emergency request for defendant's release from immigration custody.

B. Defendant Has Reasonable Access to Counsel

The Court should also deny defendant's request for dismissal of the Indictment on grounds of inadequate access to counsel. Desert View Annex's attorney visitation policy is not overly restrictive as to constructively deny defendant's access to counsel. While defense counsel may be inconvenienced by the distance they must travel to see defendant or the pre-planning required to schedule appointments and make time to visit their client, defendant and his counsel are entitled only to "reasonable" access not "the most convenient" access. In fact, courts have rejected defendant's argument that the length of travel constitutes deprivation of counsel, including the Ninth Circuit. See United States v. Lewis, 873 F.2d 1279, 1280 (9th Cir. 1989) (finding that defendant was not denied access to counsel because the 120-mile distance between him and his counsel did not actually or constructively deny him the assistance of counsel altogether); Ekene v. Cash, 2012 WL 4711723, at *12 (C.D. Cal. May 14, 2012)(citing Lewis, 873 F.2d 1279); Pino v. Dalsheim, 558 F. Supp. 673, 675 (S.D.N.Y. March 8, 1983)(noting that several courts

have noted that "travel inconvenience of an attorney ... does not reach the level of a constitutional violation.").

Here, defendant is not precluded from seeing defense counsel and may do so either in person or virtually, 24 hours a day, seven days a week. In-person visits can be by appointment or by walk-in. Appointments can be made up to a week in advance.[3] Additionally, in-person visits are not subject to any time limit. Instead, this limitation applies only to video conference and is to ensure equitable access to all detainees. Further, the clearance for translators and paralegals is not overly burdensome as it takes approximately fifteen minutes to gain clearance. Accordingly, defendant has reasonable access to counsel. He has not shown otherwise, nor has his counsel alleged that they have made attempts to access their client that have been denied or frustrated.

C. Dismissal Is Inappropriate Without a Showing of Injury and Prejudice

In United States v. Morrison, the Court ruled that the remedy for a violation of a defendant's Sixth Amendment right to counsel "should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." 449 U.S. 361,364 (1981); see also United States v. Zarate, 2019 WL 6493927 (D. Nev. Dec. 2, 2019). While the Court in Morrison did leave the door open for potential dismissal on a record that reflects continuing prejudice, see Morrison, 449 U.S. at 367,

[3] Defense counsel alleges that appointments must be made "at least" one week in advance. Defendant's Ex Parte Application, Dkt. 40 at 3, 9 (emphasis added). This misreads Dessert View Annex's visitation policy which states that appointments can be made "up to" one week in advance. Peterson Decl. ¶4, Ex. 1, ¶5 (emphasis added).

fn. 2, defendant here has not shown continuing prejudice, let alone actual injury.

The procedural history in Zarate is virtually identical to the facts in this case. There, ICE detained defendant pending removal proceedings following release under the Bail Reform Act. See Zarate, 2019 WL 6493927 at *1. In Zarate, unlike here however, defendant was actually prevented from seeing her defense counsel for a short period while in ICE custody. Defendant in Zarate raised virtually the same arguments that defendant is making in this case, but the court relying on Morrison, held that defendant "does not even approach demonstrable prejudice from the short period that her counsel were unable to meet with her." Id. at *4. The Zarate court held that even if defendant's ICE custody rose to the level of deprivation of counsel -- the court found that it did not -- the remedy would not be dismissal of the indictment. Id.

To the extent defendant is concerned that his detention pending removal proceedings will infringe on his constitutional rights, the government has already coordinated with ERO to ensure defendant's transportation from ICE custody to future criminal proceedings in this matter. Cf. United States v. Santos-Flores, 794 F.3d 1088, 1090 (9th Cir. 2015) (holding that a district court may "craft an appropriate remedy" if immigration detention "jeopardizes the district court's ability to try him"). As a result, a request to dismiss the criminal case at this time is premature. See, e.g., United States v. Yostin Sleiker, et al., 5:25-mj-00140-KK, Criminal Minutes, Dkt. 26 (C.D. Cal. Apr. 8, 2025) (deferring ruling on an emergency motion for release from immigration custody after being released on bond under the Bail Reform Act).

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court deny defendant's emergency request for release from ICE custody or dismissal of the Indictment.